

NO. 44,365-01-B

EX PARTE

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IN THE 181ST DISTRICT COURT

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IN AND FOR

ERNEST LOPEZ, II

§

POTTER COUNTY, TEXAS

2009 Affidavit of Emma Oy Hir Lew, M.D. on Habeas Corpus Writ

BEFORE ME, the undersigned Notary, personally appeared Emma Oy Hir Lew, who, being by me duly sworn, deposed as follows:

My name is Emma Oy Hir Lew. I am of sound mind, am over 18 years of age, am capable of making this affidavit, and give this affidavit freely and voluntarily.

I have been asked if I would review information on the following described case. I understand that Judge Alcalá, who is presiding over this case in Amarillo, Texas, has stated that he will consider medical affidavits in the proper form in this post-conviction litigation. I am asking Judge Alcalá or any other judge who may review this case to consider my medical opinion(s). I am a medical doctor.

I was sent a great amount of material to review in the death of Isis Charm Vas. I have reviewed a good amount of material and have reviewed more than the amount necessary to make conclusions beyond a medical probability. Based upon my education, training, and/or experience, I state that my medical opinions about Isis Charm Vas in this affidavit are made at least to a reasonable medical probability. I also make my positions on any noted assumptions. I am willing to appear and testify, under oath, in a court of law about the facts stated in this affidavit. Attached hereto as Exhibit "A" is a copy of my Curriculum Vita so the Court can determine that I am qualified to make and hold these opinions.

CASE of Isis Vas, Amarillo, Texas:

I am a licensed physician in Florida with certification in Anatomic and Forensic Pathology from the American Board of Pathology. I practice forensic pathology full time as the Deputy Chief Medical Examiner at the Miami-Dade County Medical Examiner Department in Miami, Florida. In addition to administrative and supervisory responsibilities, I investigate and certify deaths as an associate medical examiner, consult on living subjects/complainants for Internal Affairs Bureaus of law enforcement

agencies, State Attorneys and US Attorneys, and lecture in courses hosted by our department and by outside agencies. Our medical examiners routinely testify as substitute witnesses in medical examiner cases when the original medical examiner is not available at the time of deposition, hearing or trial. My experience in evaluating infant deaths spans the spectrum from the chronically ill child dying in hospital with volumes of well-documented medical records, to the child who presents with symptoms and dies sometime after admission, to the child who is found moribund and dies in the emergency department, to the child who dies suddenly at the scene with little or no history available.

Mr. Mark Baskett, Assistant District Attorney in Amarillo, Texas, has requested that I review materials on the Isis Vas, Amarillo, TX Case, for the purpose of obtaining an independent determination of the cause and manner of death. The materials provided to me on a compact disk (CD) include hospital and autopsy photographs, and statements from Dr. Joni McClain, other physicians and other medical professionals.

ASSESSMENT:

The autopsy photographs show head injuries.

Faint ecchymoses are on the forehead. Small ecchymoses are in the right upper corner of the forehead, above the right ear, on the tip of the nose and possibly on the left side of the chin. Small abrasions are more prominent on the right upper eyelid than on the left upper eyelid. The occipital scalp has a large central abrasion, purple ecchymoses and tiny abrasions superior to the large abrasion.

Small frontal subscalpular ecchymoses are bilateral. Multiple parietal sagittal subscalpular ecchymoses are surrounded by an erythematous blush. A small subscalpular ecchymosis is in the left occipital region. Small subgaleal ecchymoses are on the right side of the head and in the midline of the occipital region.

Clotted subdural blood is over the right cerebrum. A small amount of subdural blood over the left cerebrum may be due to artefactual extension from the right subdural hematoma as a result of the routine autopsy process.

The hospital and autopsy photographs show anogenital injuries.

The sexual assault nurse examiner's photographs are more representative of the appearance of the perineum, genitalia and anus at the time of presentation to hospital than the autopsy photographs which were taken later. The external genitalia have a recent laceration of the posterior fourchette at the 6 o'clock position that extends internally to the posterior border of the hymen; the laceration is associated with swelling and ecchymosis of the soft tissues. The posterior aspect of the hymen is swollen and ecchymotic up to the undulating posterior free edge. The labia majora have no abrasions, lacerations or ecchymoses.

The perianal region and anus are ecchymotic in the hospital photographs. An arc of erythema along the posterior border, and two punctate areas of erythema on the left side of the external anus at autopsy are consistent with abrasions, and the anal canal is erythematous.

Other Lesions:

Lesions elsewhere on the body include a small ecchymosis with a speckled pattern on possibly the left upper chest, small ecchymoses on the left upper arm and left side of the flank/pelvis, a possible superficial small abrasion on the left side of the pelvis, a faint ecchymosis along the lateral aspect of the right inguinal region, and possible small ecchymoses on the lateral aspect of the left thigh. Small abrasions are on the lateral aspect of the left lower leg above the lateral malleolus of the ankle. These lesions are minor injuries and did not cause the death of Isis Vas.

An ecchymosis and a punctate abrasion (possibly needle puncture mark) with a small ecchymosis are in the right antecubital fossa. A probable intraosseous needle puncture mark is on the anteromedial aspect of the right lower leg. These lesions were likely iatrogenic.

The photographs do not show lesions that are suggestive of spider bites.

COMMENT:

Isis Vas was left in the care of an adult couple, DeAnn and Ernest Lopez. Dr. Vas (Isis' mother) called 30 minutes prior to DeAnn leaving home to go shopping and Isis was fine at that time. Mr. Lopez became the sole adult caretaker beginning at 10:15 A.M. Mr.

Lopez called the answering service for Dr. Carmen Werner (pediatrician) at 11:00 A.M. to report that Isis was not breathing.

Within 45 minutes, a child who was awake and alert, and by history was drinking fluids, stopped breathing and had blood trickling out of her vaginal region. A laceration of the posterior fourchette and retinal hemorrhages were diagnosed at the hospital. Isis survived approximately 24 hours from the time of the 911 call and was pronounced dead at 10:30 A.M. the following day. The autopsy disclosed multiple ecchymoses and confirmed blunt head trauma, retinal hemorrhages and anogenital injuries.

~~The blunt head trauma would not be consistent with Isis being awake, alert and apparently normal; there are no accounts that Isis was behaving abnormally when DeAnn left the home. Therefore, the head injury occurred within that 45 minute period after DeAnn left.~~

The laceration of the posterior fourchette bled and the presence of blood emanating from the genital region prompted the sexual assault examination. The genital laceration was the result of blunt trauma from a penetrating force that stretched and tore the small vaginal opening. The sexual assault examiner documented bleeding abrasions around the anus; posterior and left-sided abrasions are evident in the autopsy photographs. Dr. McClain also documented contusions. There was no history of prior vaginal or anal bleeding or injury. Therefore, the anogenital injuries occurred within that 45 minute period when Isis was left with the sole adult caretaker. Sexual assault examiners are especially gentle with infants and children and would not cause the posterior fourchette laceration or the anal/perianal contusions and abrasions.

There was no objective physical evidence of spider bites on Isis Vas in the hospital or at the autopsy.

There may have been psychosocial issues involved in the family dynamics but these did not cause the death of Isis Vas. A number of medical complications were documented while Isis was in the hospital; these complications were secondary to the initial injuries. The psychosocial issues and medical complications should not be overinterpreted. Rationalization becomes confabulation when factors are taken out of context and interpreted in isolation. The context here is that a 6 month old infant girl is left alone with a sole adult caretaker and becomes comatose within 45 minutes, having sustained blunt head trauma and blunt anogenital injuries. The terminal events as described by

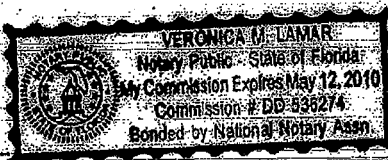
the sole adult caretaker for that 45 minute period do not explain, and are not consistent with, the injury patterns. The cause of death is blunt head trauma. Within the context of the factual, physical and medical evidence as provided, the manner of death is homicide.

Emm M.D.

Affiant, Emma O. Lew, Medical Doctor

SUBSCRIBED TO AND SWORN before me the 18 day of September, 2009.

Date My Notary Commission Expires:



Notary Public, State of FLORIDA, Signature

[Signature]

Notary's Printed Name

Veronica M. Lamar